IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 720 OF 1984

1. Dinkar Ramchandra Morbale,
2. Krishna Ganu Powar, since
   deceased, by his L.Rs.:
   a. Rajaram Krishna Powar,
   b. Shantabai Maruti More,
   c. Jaysingh Krishna Powar,
   d. Shripati Krishna Powar,
3. Shivaji Kerba Powar, minor
   guardian Smt.Hirabai Kerba
   Powar,
4. Dhondiba Mahadu Powar,
5. Narayan Bhiva Powar,
6. Rama Govind Powar,
7. Maruti Dnyanu More,
8. Vishnu Dadu Powar,
9. Joti Arjuna Powar,
10. Vithoba Mahadu Powar ... Petitioners

versus

1. Mahadu Nathu Warke,
   since deceased, by his L.Rs.:

A-Chandrakant Mahadeo Warke,

B-Smt.Housabai Mahadeo Warke,

C-Mrs.Akkatai Ananda Nikam,

D-Mrs.Laxmi Bharat Patil,

E-Mrs.Saraswati Krishna Jondhale,

2. - writ petition abated - ... Respondents

...

Mr. S.M. Kamble for Petitioners Nos. 1 and 6 to 10.

Mrs. Varsha Palav for Respondents Nos. 1 A to E.

W.P. dismissed as against rest of the Petitioners and abated as against rest of the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

9th August 2004

ORAL JUDGMENT :

1. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Kolhapur, dated September 1, 1983 in Revision No. MRT-KP-168/82. Briefly stated, the land in question is agricultural land bearing No. RS 59/1B situated at village

Kalankwadi taluka Bhudargad, district Kolhapur. The Respondents instituted suit bearing Regular Civil Suit No. 28 of 1977 in the Court of Civil Judge, Junior Division, Radhanagari, for possession of the suit land and for mesne profits on the assertion that they were the tenants in the suit land prior to the tillers' day, i.e., 1st April 1957, on account of which they became deemed purchasers thereof and that they have purchased the same by paying the purchase price and certificate under section 32M of the Act was also granted in their favour. In other words, it was stated by the Respondents that they are the tenant purchasers in respect of the suit land, which was originally owned by one Smt. Jankibai Digambar Kulkarni. It was their case that the Petitioners herein forcibly dispossessed them in December 1973 on the basis of false pencil entry for which reason, suit for possession came to be filed. In the said suit, the Petitioners filed written statement stating that the land bearing R.S.No. 59 was totally admeasuring 5 acres 30 gunthas and the whole land was owned by one Laxmibai Ganesh Kulkarni and not by Janaki Digambar Kulkarni. It is their case that their

predecessor one Gopal Babai Powar was inducted in the suit land as tenant pursuant to Kabulayat dated 18th February 1939 for 10 years and since then he was lawfully cultivating the suit land. The Petitioners, therefore, claimed right, title and interest in the suit land through their predecessor Gopal Babai Powar and asserted that, in fact, they have become deemed purchasers being in lawful cultivation of the suit land on the tillers' day, 1st April 1957. On the basis of pleadings, as filed before the Civil Court, issues which could be exclusively tried by the tenancy court did arise. Accordingly, those issues were framed and reference was made to the tenancy court under section 85A of the Act, to decide the following issues :

> "1. Do plaintiffs prove that on the date of suit they were in possession of the suit lands on the basis of their tenancy rights ? and
>
> 2. Do the defendants prove that their forefathers were the tenants over the suit land and after their death, they had

become the tenants over the suit land ?"

2. The said reference proceeded before the Tahsildar, Bhudargad, being TNC Reference No. 10/1977. The tenancy authority by decision dated October 30, 1982, found that the plaintiffs, Respondents, were the tenants in the suit land. For coming to that conclusion, the tenancy authority referred to the previous proceedings between Jankibai and the Respondents plaintiffs and found that the conclusion that the Respondents were tenants was inevitable. The tenancy authority rejected the claim of the Petitioners that they were tenants through Laxmibai Ganesh Kulkarni in the suit land and found that the Petitioners were trespassers. Against that decision, the Petitioners carried the matter in appeal before the Deputy Collector and Special Land Acquisition Officer, No. 8, Kolhapur being Tenancy Appeal No. 6/1992. The appellate authority on analysing the evidence on record in substance found that the first authority had glossed over the crucial aspect that Laxmibai was the owner in respect of the suit land and there was ample material on record

to establish that position, besides the admission of Jankibai in the Criminal Case No. 5 of 1969 that she did not have any title in the suit land. It will be apposite to reproduce the view taken by the appellate authority, on the basis of which the appellate authority thought it appropriate to remand the matter to the first authority for a de novo trial after allowing the parties to lead evidence. The same reads thus :

> "After hearing both the sides and examining evidence on record it is observed that Shri Gopal Babaji Powar has accepted the suit land for cultivation as tenant from Smt. Laxmibai Kulkarni by a register Kabulayat of 28-2-39 (p. 221). He is forefather of the appellants as admitted by the watmukhatyar of Laxmibai's adopted son. (p. 211). The respondents in their application at page 127 have stated that Smt. Jankibai w/o Digambar Kulkarni is the owner of the suit land. They relied on Vyavastha Patra at page 117. The lower court has made Smt. Jankibai as party in the

proceeding as requested by the respondent (121). However Smt. jankibai denied the ownership of the suit land (p. 247). In the Vyavastha Patra (p.117) the suit land is not mentioned therein. No other evidence on record to show that Smt. Jankibai is owner of the suit land not the claim ownership of the same. On the other hand it has observed from the judgment in Criminal Case No. 5/69, Smt.Jankibai deposed before the Sub Divisional Magistrate, Gadhinglaj Dn., Gadhinglaj that she did not have any title in the S.No.59/1-A and 59/1-B. She further stated that the respondent in the present appeal approached her and told her that since these lands stood in her name, she should sell these lands to them for some amount. She admits that she was tempted by the money and executed sale deed (p. 197). Smt. Jankibai has confirmed this fact before the lower (court) in her deposition at p. 247. The lower court has not (taken) into consideration this fact before coming to

the conclusion that Smt.Jankibai is owner of the suit land and respondents are tenant thereof. He relied on the decision given in 32-G proceeding and has drawn inference while giving findings of the issues.

On going through the judgment in 32G enquiry (p.69) it has disclosed that no proper enquiry was made nor any issues were framed by the Addl.Tahasildar and A.L.T., Bhudargad. He relied on sale deed at page 59 while accepting respondents as tenant and deemed purchaser of the suit land and directed to issue purchase certificate u/s. 32M. The lower court has taken into consideration this judgment as basic data for giving findings on the issue referred by the Civil Court. He has not examined the appellants Nos. 1, 2, 4 to 9 nor he tried to discuss the evidence put before him. His findings is based on presumption and not on the evidence on record.

In the result, I have no alternative than to pass the following order.

ORDER

The appeal is allowed. Order of the lower court is set aside and case remanded back for retrial. The lower court should examine the appellants Nos. 1, 2, 4 to 9 and decide the case on merit by allowing both the parties to lead their respective evidence. No order as to the costs."

3. Against this decision, the Respondents carried the matter in revision before the Tribunal. The Tribunal in the impugned judgment in the first place found that there was no occasion for the appellate authority to remand the matter, that too by directing the first authority to permit the parties to adduce further evidence, as no such request was made. It then went on to analyse the evidence, which was on record, namely, the 7 x 12 extracts and the

proceedings which culminated in favour of the Respondents between them and Jankibai declaring the Respondents having become deemed purchasers. On that basis, the Tribunal preferred to affirm the view taken by the first authority. The Tribunal also rejected the claim of the Petitioners that, in fact, Laxmibai was the owner of the suit land and that the same was leased to predecessor of the Petitioners. On the above reasoning, the Tribunal preferred to allow the revision preferred by the Respondents and set aside the decision of the appellate authority, and, instead, restored the order passed by the first authority. This decision of the Tribunal is the subject matter of challenge in the present writ petition.

4. After considering the decision of the three Courts below, to my mind, the Tribunal has clearly exceeded its jurisdiction in interfering with the finding of fact by reappreciating the evidence on record in exercise of its revisional jurisdiction. As mentioned earlier, the first authority merely adverted to the proceedings between Jankibai and the Respondents, wherein the

Respondents came to be declared as deemed purchasers in respect of the suit land. The first authority made no reference to the grievance of the Petitioners that the land was in fact owned by Laxmibai, which was leased out to the Petitioners' predecessor by Kabulayat dated 29th February 1939. The appellate authority noticed this manifest error committed by the first authority and after recording a finding of fact that the evidence already on record would clearly establish that Laxmibai was the owner in respect of the suit land and Jankibai had no causal connection with the same proceeded to take the view that the appropriate course was to relegate the parties before the first authority for re-examination of the matter by adducing further evidence, if so advised. The Tribunal indeed may be justified in observing that there was no request made by the parties for permission to adduce further evidence, but that reason alone could not have been the basis for interfering in exercise of revisional jurisdiction to overturn the findings of fact and the opinion expressed by the appellate authority, which was a possible view. The Tribunal went further in

reappreciating the evidence on record and committed the same error, which was committed by the first authority in placing emphasis on the materials to show that the Respondents were declared as deemed purchasers in the proceedings between them and Jankibai. Indeed, the Tribunal has also adverted to the documents, which were pressed into service on behalf of the Petitioners that Jankibai had no concern with the suit land, but it was Laxmibai, who was the actual owner thereof. The Tribunal went on to reappreciate the evidence to overturn the finding of fact recorded by the appellate authority. That is not the scope of powers under section 76 of the Act. It will be useful to refer to the case of Maruti Bala reported in A.I.R. 1974 S.C. 2051, wherein the Apex Court has spelt out the scope of interference in exercise of revisional jurisdiction. In the present case, the Tribunal has clearly exceeded its jurisdiction by reappreciating the materials on record to take a different view than the one taken by the appellate authority in a case, where the view taken by the first authority was an error apparent on the face of the record. In other

words, to my mind, the Tribunal has committed manifest error in interfering with the order of remand passed by the appellate authority, which was warranted and ought to be sustained in the fact situation of the present case. Accordingly, this writ petition shall succeed. The impugned judgment and order is set aside. The order passed by the appellate authority dated August 30, 1982 is restored with direction to the first authority to finally dispose of the proceedings upon remand as expeditiously as possible preferably within six months from the date of receipt of writ of this Court. Petition succeeds on the above terms. No order as to costs.

. Parties to act on the authenticated copy of this Judgment.

(A.M.KHANWILKAR,J.)